Supreme Court, U.S.
FILED
DEC 30 1999
CLERK

(2)

No. 99-965

In The

Supreme Court of the United States

MRS. CAROLYN S. SMITH,

Petitioner,

vs.

DR. CHARLES H. FAUCHEAUX, ST. ANNE HOSPITAL and HEALTH CENTERS, and STATE OF LOUISIANA MEDICAL REVIEW PANEL, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT ST. ANNE GENERAL HOSPITAL'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Carolyn Smith's Petition For Writ Of Certiorari should be granted.

2. Whether the United States Court of Appeal for the Fifth Circuit properly affirmed the United States District Court for the Eastern District of Louisiana in granting St. Anne General Hospital's Motion to Dismiss for lack of subject matter jurisdiction.

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DISCLOSURE STATEMENT

St. Anne General Hospital is a political subdivision of LaFourche Parish, Louisiana, and its principal place of business is Raceland, LaFourche Parish, Louisiana.

TABLE OF CONTENTS

Page

Questions Presented i

List Of All Parties ii

Corporate Disclosure Statement ii

Table of Contents iii

Statement of The Case 1

Reasons Why the Petition For Writ of Certiorari Should Be Denied 4

I. The Petition For Writ of Certiorari should be denied because it does not meet the applicable standard 4

II. The United States Court of Appeal for the Fifth Circuit properly affirmed the United States District Court For the Eastern District of Louisiana in granting St. Anne General Hospital's Motion To Dismiss for lack of subject matter jurisdiction 7

Conclusion 13

TABLE OF AUTHORITIES

Page

CONSTITUTION

U.S. Constitution, Article 1, Section 10 9

U.S. Constitution, Article 4 9

U.S. Constitution, Article 6 9

STATUTES

18 USC 1001 ..... 3, 4, 8, 10, 12

28 USC 1254 4

28 USC 1331 ..... 2, 9, 11

28 USC 1332 ..... 2, 8

42 USC 1985 ..... 3, 10, 11

42 USC 1986 ..... 3, 11

Fed. R. Civ. P. 9(b) 10

Fed. R. Civ. P. 12(b)(1) 8

Fed. R. Civ. P. 12(h)(3) 12

CASES

Bell v. Health-Mor, Inc., 549 F.2d 342 (5th Cir. 1977) 12

Benton v. U.S., 960 F.2d 19 (5th Cir. 1992) 8

Hospital Building Co. v. Trustees of Rex Hospital, 425 U.S. 738 (1976) 8

J.A.R., Inc. v. M/V Lady Lucille, 963 F.2d 96 (5th Cir. 1992) 7

Marathon Oil Co. v. Ruhrgas, 145 F.3d 211 (5th Cir. 1998) 7

TABLE OF AUTHORITIES – Continued

Page

Marts v. Hines, 68 F.3d 134 (5th Cir. 1995) 12

Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826 (1989) 9

Rhone v. Energy North, Inc., 790 F.Supp. 353 (D. Mass. 1991) 11

Screven County v. Brier Creed Hunting and Fishing Club, Inc., 202 F.2d 369 (5th Cir. 1953) 7

Seoane v. Ortho Pharmaceuticals, Inc., 660 F.2d 146 (5th Cir. 1981) 6

Smith v. Grimm, 534 F.2d 1346 (5th Cir. 1976) 7

U.S. v. Tobon-Builes, 706 F.2d 1092 (11th Cir. 1983), *rehearing denied*, 716 F.2d 914 10

Wesley v. Don Stein Buick, Inc., 985 F.Supp. 1288 (D. Kan. 1997) 12

Williams v. McCausland, 751 F.Supp. 272 (S.D.N.Y. 1992) 10

Williamson v. Tucker, 645 F.2d 404 (5th Cir. 1981), *cert. denied*, 454 U.S. 897 (1981) 7

Ynclan v. Department of Air Force, 947 F.2d 1388 (5th Cir. 1991) 7, 8

COURT RULES

Rules of the Supreme Court of the United States, Rule 10 5

STATEMENT OF THE CASE

On August 16, 1995, Thomas and Carolyn Smith filed a medical malpractice claim before the Patients' Compensation Fund through her then counsel of record. That Claim was asserted pursuant to the Louisiana Medical Malpractice Act, La. R.S. 40:1299.41, *et seq.*, and was styled "THOMAS AND CAROLYN SMITH, ET AL VERSUS DR. CHARLES H. FAUCHEAUX AND ST. ANNE GENERAL HOSPITAL", PCF Number: 95-111. That Claim alleged medical malpractice in connection with Carolyn Smith's pregnancy and pre-natal care in 1993 through February 1994, and in delivery and post-natal care related to the birth of the minor child T.J. Smith. The Patients' Compensation Fund appointed Jack Wise as Medical Review Panel Attorney Chairman. In due course, the Medical Review Panel was formed, and the Medical Review Panel met pursuant to notice on October 6, 1997. On that date, the Medical Review Panel unanimously ruled that the evidence does not support the conclusion that Dr. Charles H. Faucheaux or St. Anne General Hospital failed to comply with the applicable standard of care as charged in the Complaint in their treatment of Carolyn Smith and T.J. Smith.

On or about February 20, 1998, Smith filed a pleading before the United States District Court For The Eastern District of Louisiana entitled "Malpractice, Negligence Per Se, and Fraud". Smith claims she "sustained serious and grievous injury to her uterus, placenta, and child". (R 67). The pleading vaguely refers to "their false statement of a material fact" and the defendants' "knowledge" that "the statement was untrue". Although mostly incomprehensible, the pleading seems to be a garden variety

state law medical malpractice claim, which she attempts to transform into a federal "civil and criminal action".

On or about March 19, 1998, St. Anne General Hospital filed its Motion To Dismiss And Alternative Motion For More Definite Statement. (R 43). St. Anne General Hospital asserted that the United States District Court does not have subject matter jurisdiction because there is no diversity of citizenship for purposes of 28 USC 1332 and because there is no federal question for purposes of 28 USC 1331. Alternatively, St. Anne General Hospital moved that the Court strike from the Complaint vague references to "criminal action" and alleged "fraud, malpractice, and negligence per se", or in the further alternative moved for a more definite statement because the Complaint is so ambiguous, vague, and confusing that St. Anne General Hospital cannot reasonably frame a responsive pleading, and that the Complaint does not allege with particularity the circumstances constituting supposed "fraud".

Although not received by St. Anne General Hospital until after it had filed its Motion To Dismiss, on March 13, 1998 the District Judge *sua sponte* ordered Smith to file a written response setting forth the basis of the Court's jurisdiction, including the following information:

- The specific address of each defendant;
- A clear statement setting forth the particular statute under which the plaintiff claims to proceed;
- A clear statement setting forth the specific location where the events alleged occurred; (R 60).

On March 25, 1998, Smith filed her "Answers To Interrogatories Of Order" and an "Affidavit". (R 34, 37). There, Smith repeated the same constitutional and statutory provisions cited earlier in her pleadings, adding a reference to 42 USC 1985 and 1986. She also added that her "power of attorney for the church and diversity matters has been given to Reverend Preston L. Scarbrough, House of Prayer Tabernacle (BC) on August 22, 1989". (R 37). Those documents apparently were the only "response" to St. Anne General Hospital's Motion To Dismiss And Alternative Motion For More Definite Statement.

On January 22, 1999, the District Court granted St. Anne General Hospital's Motion To Dismiss. The District Court also dismissed this action for lack of subject matter jurisdiction *sua sponte* as to all other defendants. The District Court dismissed St. Anne General Hospital's Motion To Strike and Motion For More Definite Statement as moot in view of the Court's ruling on the Motion To Dismiss. The District Court dismissed all the plaintiff's claims as to all defendants. (R 8, 10).

In its thorough Reasons, the District Court noted that subject matter jurisdiction cannot possibly be based upon diversity of citizenship nor on federal question. Both Smith and St. Anne General Hospital are domiciliaries of LaFourche Parish, Louisiana. The District Court correctly noted that Smith cannot rely on federal question jurisdiction by invoking various constitutional provisions and federal statutes. The cited Constitutional provisions have nothing to do with this case. Vague and conclusory references to "conspiracy" or "fraud" are not supported. The plaintiff has no standing to bring a suit under 18 USC

1001 because it does not provide a private right of action. (R 10).

On August 31, 1999, the United States Court of Appeal for the Fifth Circuit affirmed the United States District Court for the Eastern District of Louisiana. The Court of Appeal noted that both Mrs. Smith and all the defendants are domiciled in the State of Louisiana, and subject matter jurisdiction cannot be based upon diversity of citizenship. Further, the Court of Appeal recognized that Smith's attempt to establish some sort of "federal question" is devoid of merit, and that essentially her claim boils down to a simple medical malpractice case. The Court of Appeal held that because Smith has established neither diversity of the citizenship nor a federal claim, the District Court did not err in dismissing the claim as to all defendants.

On September 30, 1999, the United States Court of Appeal for the Fifth Circuit denied Smith's Petition For Rehearing.

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

I. The Petition For Writ of Certiorari should be denied because it does not meet the applicable standard.

Smith apparently presents her Petition For Writ Of Certiorari pursuant to 28 USC 1254. The decision by the United States Court of Appeal for the Fifth Circuit is *not* in conflict with the decision of another United States Court of Appeal, and the United States Court of Appeal

for the Fifth Circuit has *not* decided an important federal question in a way that conflicts with the decision of a state court of last resort. The United States Court of Appeal for the Fifth Circuit has *not* so far departed from the accepted and usual course of judicial proceedings so as to call for the exercise of the supervisory power of the United States Supreme Court. The United States Court of Appeal for the Fifth Circuit has *not* decided an important question of federal law that has not been, and need not be, settled by the United States Supreme Court. Finally, the United States Court of Appeal for the Fifth Circuit has *not* decided an important federal question in a way that conflicts with relevant decisions of the United States Supreme Court. (Rules of the Supreme Court of the United States, Rule 10).

The Louisiana Medical Malpractice Act, La. R.S. 40:1229.41, *et seq.* procedurally controls the manner in which a medical malpractice claim is filed and handled before the claimant files suit in District Court. Among its other provisions, the Louisiana Medical Malpractice Act requires that the Claim be first presented to a Medical Review Panel, which must review the evidence and issue an expert opinion concerning whether the evidence indicates that the health care provider failed to comply with the applicable standard of care as charged in the Complaint, and whether the health care provider caused the injuries or losses alleged in the Complaint. The manner in which the Medical Review Panel reviewed Smith's claim and the Medical Review Panel's unanimous Opinion *conformed perfectly* to the Louisiana Medical Malpractice Act and all other applicable law.

Seoane v. Ortho Pharmaceuticals, Inc., 660 F.2d 146 (5th Cir. 1981) specifically reviewed the constitutionality of the Louisiana Medical Malpractice Act, La. R.S. 40:1229.41, *et seq.*, and affirmed the District Court's judgment that those administrative procedures which are applicable in a diversity case did not violate Due Process nor Equal Protection. *Seoane* held that the Equal Protection challenge at issue must be measured by the rational basis standard, and held that nothing suggested that the statute violated the Equal Protection clause. Further, the Medical Malpractice Act does not restrict the exercise of a fundamental right, and the Court of Appeal limited its review to resolving whether the legislation is arbitrary – in other words whether the legislation is reasonable in light of a legitimate governmental goal. *Seoane* recognized that the:

> "The apparent purpose of the medical review panel is to screen groundless complaints, assist in the evaluation of legitimate claims, and encourage settlements. Such legislative design is reasonable and seemingly sound. It readily withstands the due process challenge. The limited Court access restriction, posed by this statute, does not constitute a denial of due process." *Seoane*, 660 F.2d at 151.

Neither Smith's Petition For Writ Of Certiorari nor the evidence reviewed by the Court's below contain any support whatsoever that the United States Supreme Court should grant Smith's Petition For Writ Of Certiorari.

II. The United States Court of Appeal for the Fifth Circuit properly affirmed the United States District Court for the Eastern District of Louisiana in granting St. Anne General Hospital's Motion to Dismiss for lack of subject matter jurisdiction.

Every Federal Court at all levels has jurisdiction to determine its own jurisdiction, and has appellate jurisdiction to review, reverse, modify, or affirm the lower Court's decision. *Screven County v. Brier Creek Hunting and Fishing Club*, 202 F.2d 369 (5th Cir. 1953). Whenever doubt arises as to the existence of subject matter jurisdiction, a Federal Court is obliged to inquire *sua sponte* whether jurisdiction exists. *Marathon Oil Co. v. Ruhrgas*, 145 F.3d 211, 217 (5th Cir. 1998); *J.A.R., Inc. v. M/V Lady Lucille*, 963 F.2d 96, 98 (5th Cir. 1992). A Federal appellate court may review subject matter jurisdiction even if not raised below, *Smith v. Grimm*, 534 F.2d 1346 (5th Cir. 1976).

A District Court may decide a Motion To Dismiss For Lack of Subject Matter Jurisdiction on one of three bases: the Complaint alone; the Complaint supplemented by undisputed facts evidenced in the record; or the Complaint supplemented by undisputed facts evidenced in the record; or the Complaint supplemented by undisputed facts plus the Court's resolution of disputed facts. *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981), *cert. denied*, 454 U.S. 897 (1981); *Ynclan v. Department of Air Force*, 943 F.2d 1388, 1390 (5th Cir. 1991). When the basis of the dismissal is evident from the record, the Court of Appeal's review is limited to determining whether the District Court's application of the law is correct and

whether the facts are undisputed. *Ynclan v. Department of Air Force*, 943 F.2d 1388, 1390 (5th Cir. 1991).

When reviewing a Fed. R. Civ. P. 12(b)(1) dismissal for the lack of subject matter jurisdiction, the Court will take the factual allegations as true for purposes of the appeal and review the case de novo under the same standard used by the District Court: a claim may not be dismissed unless it appears certain that the plaintiff cannot prove any set of facts in support of her claim which would entitle her to relief. *Hospital Building Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 742 (1976); *Benton v. U.S.*, 960 F.2d 19, 21 (5th Cir. 1992).

Smith who describes herself as domiciled in LaFourche Parish, Louisiana seeks to transform what appears to be a garden variety state law medical malpractice claim into a federal "civil and criminal action" by referencing certain sections of the U.S. Constitution, 18 USC 1001, and other federal statutes. However, scattershot references to federal statutes do not confer subject matter jurisdiction.

St. Anne General Hospital attached to its Motion To Dismiss the Affidavit of Milton D. Bourgeois, Jr., its Chief Executive Officer. (R 47). Mr. Bourgeois testified by Affidavit that St. Anne General Hospital is a political subdivision of LaFourche Parish, and its principal place of business is Raceland, LaFourche Parish, Louisiana. Because Smith specifically alleges that she is domiciled in LaFourche Parish, Louisiana, subject matter jurisdiction cannot possibly be based upon diversity of citizenship.

The District Court is correct in holding that there is no diversity of citizenship for purposes of 28 USC 1332.

The plaintiff and all defendants are citizens of Louisiana. If just one defendant is a citizen of the same state as the plaintiff, subject matter jurisdiction cannot be based on diversity of citizenship. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 829 (1989). (R 14).

Likewise, jurisdiction cannot possibly be based upon federal question pursuant to 28 USC 1331. The Complaint alludes to claimed or supposed medical malpractice between July 28, 1993 and February 21, 1994, and obliquely acknowledges the Complaint *already* has been *presented to the Medical Review Panel.* It is understatement that the Complaint is vague and confusing, and fails to set out with any clarity the facts upon which any Claim is based.

Smith's Claim cannot possibly arise under United States Constitution – Article 1, Section 10; Article 4; or Article 6. Even the most cursory review of those provisions discloses absolutely no basis for Smith to claim that her cause of action arises there. For example, the Complaint has nothing to do with a State entering into a treaty or alliance, nothing to do with granting letters of Marque, nothing to do with coining money, nothing to do with ex-post facto laws or laws impairing the obligation of contracts, nothing to do with Full Faith and Credit, nothing to do with privileges and immunities of citizens in the several states, nothing to do with persons charged in any state with treason or persons held to service or labor in one state escaping into another, nothing to do with debts contracted or engagements entered into before the adoption of the constitution, and nothing to do with Senators and Representatives being bound by oath or affirmation to support the Constitution.

Secondly, federal question jurisdiction cannot possibly be based upon 18 USC 1001. That provision declares that, in matters *within the jurisdiction of any department or agency of the United States*, a person who knowingly or willfully falsifies or conceals a material fact or makes a false or fraudulent statement shall be punished as specified. Smith clearly lacks standing to bring a "criminal action" under federal law, and neither alleged "malpractice" nor alleged "negligence per se" constitutes a federal crime. Indeed, the very purpose of 18 USC 1001 is to prevent deceptive practices aimed at frustrating or impeding legitimate functions of *government departments or agencies. U.S. v. Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983), *rehearing denied*, 716 F.2d 914 (11th Cir. 1983). 28 USC 1001 does *not* provide a private right action. *Williams v. McCausland*, 751 F.Supp. 272 (S.D.N.Y. 1992). Consequently, and regardless of the "merits" of her Claim, Smith cannot possibly state a claim under that provision.

Likewise, there is absolutely no basis to allege that subject matter jurisdiction arises under 42 USC 1985, *et seq*. There is no allegation whatever that even comes close to sufficiently supporting a conspiracy to interfere with civil rights.

Further, Smith clearly has not alleged fraud with the particularity required by Fed. R. Civ. P. 9(b). Smith alleges in Paragraph V that "facts" were presented to the Medical Review Panel, that some undefined "they" had all the test results, "their recommendation constitutes malpractice . . . their false statement of a material fact", and "having knowledge on the part of the defendants that the statement was untrue". (Complaint, Paragraph V). St. Anne General Hospital has no idea to whom Smith is

referring, no idea to what "false statement" she is referring, no idea to what "knowledge" that a statement supposedly was untrue was had by whom, and no idea what facts are "material". In short, Paragraph V of the Complaint does not come close to the particularity requirement for an allegation of fraud. Allegations of fraud may be dismissed where each defendant's role is not particularly alleged. *Rhone v. Energy North, Inc.*, 790 F.Supp. 353 (D. Mass 1991).

The District Court is also correct in holding that Smith cannot rely upon federal question jurisdiction under 28 USC 1331, despite her invocation of several constitutional provisions and various federal statutes. (R 14). As the District Court points out, the provisions of the U.S. Constitution which Smith cites have absolutely nothing to do with Smith's claims. (R 15). 42 USC 1985, *et seq.*, does not provide a basis for federal question jurisdiction. The District Court correctly points out that 42 USC 1985, *et seq.*, creates a cause of action for victims of a conspiracy to interfere with their civil rights by:

- Preventing a government officer from performing his duties;
- By obstructing justice, intimidating parties, witnesses, jurors; or
- Depriving persons of rights and privileges or equal protection under the law. (R 15).

42 USC 1986 creates a cause of action against persons who, with knowledge of a 42 USC 1985 conspiracy with the power to prevent or aid in the prevention of the commission of the conspired act, neglected or refused to prevent it. The District Court is absolutely correct in

holding that the "conspiracy" claims are not supported with facts or law, and must fail. (R 15). *Marts v. Hines*, 68 F.3d 134, 136 (5th Cir. 1995); *Wesley v. Don Stein Buick, Inc.*, 985 F.Supp. 1288, 1299 (D. Kan. 1997).

Likewise, the District Court is correct in pointing out that 18 USC 1001 is a criminal statute that creates a federal crime for concealing a material fact from, or making a false or fraudulent statement to, any department or agency of the United States. That provision is designed to prevent deceptive practices aimed at frustrating or impeding legitimate functions of government departments or agencies. (R 15). The District Court correctly holds that even if the facts fit, *which the District Court specifically holds they do not*, Smith has no standing to bring a suit under 18 USC 1001 because that provision does not support a private right of action. (R 16). The right to pursue such an action rests exclusively with federal law enforcement officials.

The District Court also correctly – *sua sponte* pursuant to Fed. R. Civ. P. 12(h)(3) – dismissed the Petition for lack of subject matter jurisdiction as to all other defendants, specifically holding that:

> "The plaintiff's claims have no plausible foundation according to the statutes in federal law cited by the plaintiff in her Complaint and Answers To Interrogatories." (Order and Reasons, page 8). Citing *Bell v. Health-Mor, Inc.*, 549 F.2d 342, 344 (5th Cir. 1977). (R 16).

The United States Court of Appeal of the Fifth Circuit correctly affirmed the United States District Court For The Eastern District of Louisiana. The Court of Appeal correctly noted that because both Smith and all of the

defendants were domiciled in the State of Louisiana, subject matter jurisdiction cannot be based upon diversity of citizenship. Further, the Court of Appeal was correct in noting that Smith's attempt to establish some sort of federal question is devoid of merit, and that her Claim is a simple medical malpractice case. No legitimate federal question is involved.

CONCLUSION

For the above reasons, the Petition For Writ Of Certiorari should be denied by this Court.

Respectfully submitted this 30th day of December, 1999.

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